

REMARKS

The above Amendments and these Remarks are in reply to the Office Action mailed March 20, 2007.

Claims 1-47 were pending in the Application prior to the outstanding Office Action. In the latest Office Action dated March 20, 2007, the Examiner rejected claims 1-47. Claims 1 and 6 are amended.

Claims 1-47 remain for the Examiner's consideration.

SPECIFICATION

The Abstract has been amended as suggested by the Examiner.

CLAIM REJECTIONS UNDER 35 U.S.C. § 112

Claim 6 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Applicant thanks the Examiner for his careful reading of the claims. The Applicant has amended Claims 1 and 6 to clarify the antecedent basis for dependent Claim 6.

In view of the above, Applicants respectfully request that the Examiner withdraw the 35 U.S.C. §112(e) rejection.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102

Claims 1-47 are rejected under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent No.: 5,562,662 to Brumfield (hereinafter “*Brumfield*”).

The Applicant disagrees with the Examiner’s interpretation of *Brumfield*. *Brumfield* does not disclose lateral insertion of an interspinous process, but rather lateral stability (column 5, line 54) and lateral interconnection (column 9, line 52). Further, Figure 2 ref 20 does not disclose lateral insertion. The Examiner combines Figure 2 with the text at column 9, lines 55-57 and states that “since in passing through the bores in ref 29, it must pass from one side to the other side” (Office action dated March 20, 2007, page 3 fourth paragraph, fifth-sixth lines). The Applicant respectfully suggests that this is not a disclosure that would enable a person having ordinary skill in the art. The Applicant respectfully suggests that the Examiner is constructing an interpretation of *Brumfield* that is without a proper basis. A word search of *Brumfield* indicates that the words ‘insert’, ‘approach’ or ‘assemble’ are not present. While the bore may indicate a direction relative to other parts, since it is not specified that this direction can only be fulfilled by insertion the Applicant suggests the Examiner is partaking in hindsight reconstruction. The ref 20 device could be inserted anteriorly and the bores passed through laterally when the device is assembled *insitu*.

Further, the Applicant respectfully disagrees with the Examiner’s position that the device of *Brumfield* can be ‘deployed’. In paragraph [0008] of the specification the Applicant defines ‘deploy’ or ‘project’ as “after the device is implanted between the spinous processes”. The Examiner’s definition of deploy is not consistent with the plain meaning of the word deploy as

used in the specification. Thus, the Examiner's position that the device of *Brumfield* can be deployed is not tenable.

In view of the above, Applicants respectfully request that the Examiner withdraw the 35 U.S.C. §102(c) rejections.

CONCLUSION

In light of the above, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and a Notice of Allowance is requested. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

No fee is believed due in connection with this paper. However, the Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: May 1, 2007

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